

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE  
1425 Strawberry Square  
Harrisburg, Pennsylvania 17120

IRWIN A. POPOWSKY  
Consumer Advocate

(717) 783-5048

April 8, 1994

Mr. William Caton  
Acting Secretary  
Federal Communications  
Commission  
1919 M Street, N.W.  
Room 222  
Washington, DC 20554

APR 11 1994

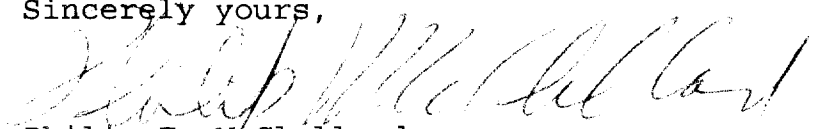
Re: Rules Governing Telephone  
Company Use Of Customer  
Proprietary Network Information  
CC Docket No. ~~94-63~~  
CC Docket No. 90-623  
CC Docket No. 92-256

Dear Mr. Caton:

Enclosed please find an original and five copies of the Comments of the Pennsylvania Office of Consumer Advocate, for filing with the Commission in the above-referenced matter.

Please indicate your receipt of this filing on the additional copy provided and return to the undersigned in the enclosed self-addressed, postage prepaid, envelope. Thank you.

Sincerely yours,

  
Philip F. McClelland  
Assistant Consumer Advocate

Enclosure  
cc: Rose M. Crellin  
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UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

RULES GOVERNING TELEPHONE	:	CC Docket No. <del>94-63</del>
COMPANY USE OF CUSTOMER	:	CC Docket No. 90-623
PROPRIETARY NETWORK INFORMATION	:	CC Docket No. <u>92-256</u>

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COMMENTS OF THE  
PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE

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Philip F. McClelland  
Assistant Consumer Advocate

For:  
Irwin A. Popowsky  
Consumer Advocate

Office of Attorney General  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

DATED: April 8, 1994

## I. INTRODUCTION

On March 9, 1994, the Federal Communications Commission issued a public notice and request for comments concerning consumer privacy expectations related to Customer Proprietary Network Information ("CPNI") and the way in which this consumer information should be used by Bell Operating Companies ("BOCs"). In particular in its Notice, the Commission has recognized that "telephone companies have planned and entered into a number of alliances, acquisitions, and mergers with non-telephone company partners. In this changing environment, access to CPNI among affiliated companies may raise additional privacy concerns."

The Pennsylvania Office of Consumer Advocate ("PaOCA") welcomes the Commission initiative. PaOCA previously filed comments on March 7, 1991 in the Commission's Computer Inquiry III proceeding and urged that affirmative customer consent be required before the BOC and its affiliates can use CPNI for the marketing of enhanced services and Customer Premises Equipment. The PaOCA reiterates that view in these comments particularly in light of the continuing industry restructuring which seems certain to create BOC affiliates not associated with traditional local exchange carrier activities.

## II. INTEREST OF PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE

The PaOCA is an office created by the Pennsylvania General Assembly to represent the interests of consumers before state and federal agencies and courts which regulate the activities of Pennsylvania public utilities. 71 Pa. Stat. Ann. § 309-4(a). As the Commission is now proposing to reconsider its rules for Bell Operating Company use of CPNI, this will have a direct impact on the customers of Bell Atlantic - Pennsylvania and so the PaOCA has determined to file these comments.

### III. PRESENTATION OF COMMENTS

The Commission has recognized that BOCs continue to acquire affiliates which are not traditional telephone companies. This raises the level of concern as to the type of BOC affiliate marketing in which CPNI may be used. PaOCA suggests that, as BOCs enter video entertainment and other fields, consumers' concern with the use of their CPNI to market such services is increased.

PaOCA asserts that, as CPNI is generated by the customer and is closely associated with the life and activities of that customer, the customer is quite justifiably concerned with how that CPNI may be used. PaOCA suggests that BOC customers already have a great deal of sensitivity concerning the type of customer information that the BOC regularly assembles on their use of the network and are concerned that its usage not be proliferated.

PaOCA emphasizes that "CPNI rules apply, with minor exceptions, to all information about customers' network services and customers' use of those services that a BOC possesses by virtue of its provision of network services." Filing and Review of Open Network Architecture Plans, Phase I, Order, 4 FCC Rcd 1, 215 (1988). As the range of BOC and affiliate services expands, so will the information contained within consumers' CPNI and its usefulness for marketing non-traditional products. It is the increasing range of information that such CPNI will disclose that causes the PaOCA to emphasize its concern regarding the unapproved use and disclosure of this information to BOC affiliates.

CPNI, even for the residential customer, will no longer simply be the disclosure of the monthly phone bill including a list of optional services purchased and additional call detail related to numbers called and time spent in conversation. Bell Atlantic has made clear its intention to construct a broadband network capable of delivering video on demand and a wide array of other services. Current projections call for this network to reach Bell Atlantic's top 20 markets by the end of 1998. Once this network is in place and the Bell Atlantic network delivers movies as well as conversation, CPNI will disclose not only who one calls but one's taste in entertainment as well.<sup>1</sup>

Bell Atlantic has already created Bell Atlantic Video Services as a new subsidiary and indicated that it will attempt to acquire video programming for Bell Atlantic Video Services to provide over its network. Thus, PaOCA submits that Bell Atlantic will provide this type of service whether or not it enters into "alliances, acquisitions, and mergers with non-telephone company partners" or develops these enterprises on its own.

When the enlarged scope of this CPNI becomes evident, PaOCA submits that consumer concern over the use of CPNI for marketing purposes will grow. In effect, the call from your local

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<sup>1</sup> The Commission has already recognized this fact to some extent. The Commission has applied its CPNI rules to video dial tone applications. Telephone Company Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Second Report and Order, ¶ 89 (1992). The Commission has recognized that RBOCs may offer enhanced and nonregulated video gateways which may include "customized menus and directories which allow the subscriber to select programming or information services tailored to individual preferences." Id. at ¶ 58, n.146 (emphasis added).

BOC will no longer be: "We noticed that you already enjoy Answer Call, would you like to try some other telephone services?" but instead, "We noticed that you seem to enjoy viewing certain types of films, would you be interested in viewing some more of those which our video affiliate has available for some of our customers?"

PaOCA suggests that, as BOC affiliates enter a greater range of non-traditional activity, any presumption of customer consent to CPNI use among affiliates must be re-examined. Customers are accepting of a certain amount of CPNI usage necessary to maintain and operate the telephone network which the customer depends and relies upon. Arguably, customers can be assumed to consent to usage closely associated with providing traditional telephone service to the customer. However, this level of general consent certainly should not be presumed to apply to all affiliate activities in the future.

PaOCA submits that the same privacy concerns apply with respect to CPNI marketing usage whether the video marketer is a BOC affiliate or an independent company. PaOCA suggests that a customer would not necessarily consent to a video provider having access to the customer's telephone usage and toll bill in order to improve its marketing ability to that customer. The fact that such a video provider is an affiliate of the BOC will do nothing to allay the customer's privacy concerns.

PaOCA suggest that, as industry structure changes and BOCs become involved in a widening array of affiliated services, the most appropriate policy is simply to solicit customer consent


before presuming any invasive access of CPNI for enhanced service marketing. PaOCA emphasizes that, if a customer desires the BOC to have the use of the customer's CPNI for marketing purposes, the customer should have every opportunity to release its use for that purpose. If, in fact, the BOC demonstrates that the use of that information would be beneficial to the customer in providing services, the customer may indeed consent to that release. However, the Commission should be extremely reluctant to make that assumption for the customer at a time when the industry is changing and the customers are fully capable of making that decision themselves.



#### IV. CONCLUSION

The Pennsylvania Office of Consumer Advocate proposes that the Federal Communications Commission should not permit Bell Operating Companies and their affiliates to use Customer Proprietary Network Information for the marketing of enhanced services unless the Bell Operating Company receives affirmative consent from that customer for such use.

Respectfully submitted,



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